

REVOLUTIONIZING NORTHERN COMMAND

BY

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USAWC STRATEGY RESEARCH PROJECT

REVOLUTIONIZING NORTHERN COMMAND

by

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ABSTRACT

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USNORTHCOM was chartered by the Department of Defense as a Unified Combatant Command to provide command and control of homeland defense and to provide defense support of civil authorities. Paradoxically though, USNORTHCOM struggles to fulfill its charter within the legal constraints of the federal government. The myriad of legal and political considerations that determine who will command troops when they are sent to respond to a hurricane, wildfire or other disaster still contributes to potential misunderstandings and friction between state and federal authorities. The problem could be more effectively resolved if the Secretary of Defense appointed a National Guard commander for United States Northern Command. Having a National Guard commander that answers to the president, through the Secretary of Defense, with the advice and consent of a bipartisan Council of Governors could substantially improve the unity of effort needed to fulfill federal and state command responsibilities as required under Title 10 and Title 32 United States Code.

REVOLUTIONIZING NORTHERN COMMAND

The ongoing debate about how best to use the different reserve components to help protect the United States homeland has been steadily picking up speed over the past decade. A National Defense Panel reported in 1997 that the National Guard should provide forces organized and equipped for training of civil agencies and the immediate reinforcement of first-response efforts in domestic emergencies, terrorist attacks and natural disasters.¹ A few years later, the Hart-Rudman Commission recommended in February 2001 that homeland defense be made “a primary mission of the National Guard.”²

United States Northern Command (USNORTHCOM) was born out of a national security need to unify interagency and interstate efforts to defend our nation from attack or overwhelming natural disaster. Like all combatant commands, USNORTHCOM is an active duty command. As a result, many of the cultural biases and tensions between active and reserve component forces permeate the working relationships between USNORTHCOM and the broader National Guard community.³

From its inception, USNORTHCOM has struggled to define legitimate roles for itself with the governing states and the National Guard forces that are available for disaster response. The purpose of this research paper is to review the historical roles and responsibilities of the National Guard and the United States Army and propose unity of effort options available to USNORTHCOM. This paper will examine the interrelated legal and political tensions that result from the Constitutional division of federal and state powers relating to national defense. It concludes with a recommended

command option to improve unity of effort between USNORTHCOM and the National Guard.

Thesis

The National Guard is the primary Department of Defense agency for domestic disaster relief. In most situations, the National Guard is called to military service as a state asset under the control of state governors.⁴ Having a National Guard officer in command of USNORTHCOM could substantially improve the unity of effort to fulfill the requisite roles and responsibilities of the Armed Forces under Title 10 and of the National Guard under Title 32 of the United States Code.

Historical Context

In order to fully understand the unity of effort controversy that exists between federal and state authorities regarding domestic security, it is important to review the historical context that gave birth to both the National Guard and USNORTHCOM while also examining their respective state and federal roles and responsibilities. The need for better interagency and interstate coordination became apparent at 8:46 on the morning of September 11, 2001 when an airliner, traveling hundreds of miles per hour, carrying over 10,000 gallons of jet fuel, flew into the North Tower of the World Trade Center. Less than 10 minutes later, a second airliner hit the South Tower. Both buildings in New York City collapsed from the resulting fire less than 90 minutes later. At 9:37, a third airliner slammed into the western side of the Pentagon in Washington, DC. At 10:03, a fourth airliner crashed into a small open field in rural Pennsylvania. The American homeland was under a terrorist attack. More than 2,600 people died when the World Trade Center buildings collapsed, another 125 people died at the Pentagon crash site

and 256 died onboard the four planes that all tragically crashed in a single day. The death toll surpassed that of the attack against Pearl Harbor on December 7, 1941.

Immediately following the September 11, 2001 terrorist attacks, the National Guard had Soldiers on duty throughout the United States within just a few hours – over 3,000 within three days and over 5,000 within 10 days. Air National Guard fighter aircraft immediately began 24 hour patrols over New York City and Washington, D.C, as well as other major cities across the nation. Other National Guard soldiers and airmen soon provided additional security at nuclear power plants, domestic water supplies, bridges, tunnels, border security sites and military bases all across the nation. The National Guard assumed an airport security mission for eight months with up to 8,200 soldiers on duty before transferring responsibility to the newly established Transportation Security Administration.⁵

In response to these events, the National Guard, in coordination with federal authorities, effectively deterred threats and helped restore public confidence in air traffic security. The quick response was due in part because the National Guard has armories already forward deployed across the homeland. Not only is their basing convenient, but there are a number of other advantages the National Guard brings to disaster response beyond just providing the bulk of forces to USNORTHCOM. For instance, the National Guard often provides local communities with additional medical officers or civil engineers during local disasters.

Significance of this Research

The Government Accountability Office (GAO) recently issued a special report requested by a bipartisan, bicameral group of legislators, that raised concerns about the fundamental operations at USNORTHCOM. The GAO found that despite some

progress, USNORTHCOM still lacks sufficient experience dealing with individual states and does not understand the differing states' National Guard capabilities and emergency management structures. Admiral Timothy Keating, USNORTHCOM's previous commander, stated in 2005 that he had little sense of the National Guard capabilities beyond the number of troops being deployed during the response to Hurricane Katrina.⁶ The GAO report also found that USNORTHCOM does not consistently involve states in major command readiness training, such as disaster planning exercises, and must improve its ability to share key information such as lessons learned and after action reports.⁷

After reading the GAO report, United States Senator Kit Bond, Chairman of the House Homeland Security Committee noted, "This report underscores the need for USNORTHCOM to coordinate with and support the state, local officials and guardsmen who know their own backyards better than anyone else." Senator Bond went on to say, "The citizen soldiers and airmen in the National Guard are not only highly trained for disaster mitigation and homeland defense, but also are members of the impacted communities which they serve."⁸

The strategy for homeland defense and civil support recognizes that there should be a "focused reliance" on the reserve components for homeland defense and civil support activities.⁹ After all, the National Guard will probably have the nearest troops to any domestic incident due to their community basing throughout the United States.¹⁰ Two such historical advantages is the National Guard experience in working with first responders and also their familiarity with local conditions both pre and post disaster.¹¹

Although the majority of USNORTHCOM domestic homeland security missions require the use of the National Guard, less than 10 percent of its military staff and only half the flag officers are currently drawn from the National Guard. USNORTHCOM would greatly benefit from the knowledge and experience of having more reserve members on its primary staff. Instead, most of the senior staff, including the commander at USNORTHCOM, are active duty officers or civilians with little experience or knowledge of the National Guard expertise, capabilities, resources and forces required for domestic response.

The National Guard

The National Guard is the oldest component of the Armed Forces of the United States with a lineage that traces back to its first regimental muster of the colonial militia in Salem, Massachusetts on December 13th, 1636. The colonial militia fought during the early Indian wars and throughout the Revolutionary War. Throughout our nation's history, citizen-soldiers have fought to the death to defend their home and hearth. The militia has since transformed itself from a militia of revolutionaries into today's operational National Guard force.

Throughout its service to the nation, units of the National Guard have fought in every war alongside the standing Army and Navy in defense of the United States of America. The Constitution of the United States empowers Congress to "provide for organizing, arming, and disciplining the militia."¹² Recognizing the militia's unique responsibility to the states' governors, the founding fathers reserved the appointment of officers and training of the militia to the states. The National Guard serves at the direction of the state governors until the President of the United States orders them into active federal service for either domestic emergencies or overseas service.¹³

To illustrate the significance of the National Guard contribution to homeland defense, it provided 70 percent of the military support of civil authorities for Hurricane Katrina even though it did not work for USNORTHCOM. Also, the National Command Region's Integrated Air Defense System is currently operated by National Guard forces. Since 2001, over 70 percent of the nation's air defense sorties have been flown by the reserve component forces.¹⁴

Multiple Duty Statuses of the National Guard

The National Guard of the United States was officially designated a reserve component of the Army in 1933 during the administration of Franklin D. Roosevelt. From that point forward, the National Guard has enjoyed dual status as members of their state militias and members of a state or federal reserve component.¹⁵ The National Guard is the only United States military force that operates across both state and federal boundaries within either of the following statuses: state active duty, National Guard active duty (Title 32), or federal active duty (Title 10). Perhaps the most important contribution of the National Guard's dual status is its political power -- a power its critics often ridicule. The National Guard is present in all states and territories, is politically active, and maintains a powerful lobby that affects every congressional district across the United States.¹⁶

Title 32 National Guard duty means military service to a state's governor. Title 32, United States Code, Sections 502(f), 901 and 902 allows the governor, with the approval of the president or the Secretary of Defense, to order a National Guard member to duty for operational homeland defense. As an example, the National Guard's Title 32 status provides a federally funded emergency force capable of providing military

assistance to state and federal law enforcement officials fighting illegal drugs and terrorism.

Title 10 Armed Forces active duty means military service to the United States. Title 10, United States Code, Sections 12301(d), 12302, 12304, 12406 and 331-334 allows the president to mobilize National Guard forces by ordering them to active duty in their reserve component status or by calling them into federal service in their militia status. As an example of this federal duty status, the Air National Guard flies most of the Title 10 active duty alert missions for North American Aerospace Command (NORAD) each and every day.

United States Northern Command

The defense and security of America's homeland is the primary national security mission of the United States government. President George W. Bush directed the establishment of USNORTHCOM on October 1, 2002 in an attempt to provide unity of command for homeland defense among the Armed Forces of the United States.¹⁷ USNORTHCOM was chartered as a direct result of the coordinated terrorist attacks against the United States on September 11, 2001. USNORTHCOM provides regional command and control of Department of Defense homeland defense efforts and coordinates defense support of civil authorities. The commander of USNORTHCOM also commands NORAD, a bi-national command responsible for aerospace warning, aerospace control, and maritime warning for Canada, Alaska and the continental United States.¹⁸ USNORTHCOM is one of 10 unified combatant commands assigned with either a regional or functional responsibility as part of the Unified Command Plan (UCP).¹⁹

Headquartered at Peterson Air Force Base in Colorado, USNORTHCOM employs about 1,200 Department of Defense civilians, contractors and service members from all military service components.²⁰ Active duty military forces are assigned to USNORTHCOM by United States Joint Forces Command (USJFCOM) to execute its mission. Like any other combatant command, USNORTHCOM coordinates its response planning with the sovereign states and nations within its area of responsibility. Such nations include Canada, Mexico, the independent Caribbean nations, along with other European territories and possessions within the Caribbean Sea.²¹

Tension between State and Federal Authorities

Developing a meaningful domestic intergovernmental relationship that fosters unity of effort between the National Guard and USNORTHCOM has been wrought with both legal and political rifts that accentuate and differentiate the Constitutional powers of the President of the United States from those of the governors from the various sovereign states and territories. The president has a Constitutional duty and obligation to support and defend the United States from foreign and domestic enemies. Likewise, the governors do not want to forfeit their Constitutional duty to command and control the National Guard forces that are assigned to them. The political rifts that hamper the unity of effort between the National Guard and USNORTHCOM must be addressed.

Although USNORTHCOM was created to unify the command of military forces in defense of the homeland, unity of effort remains an elusive problem between state and federal authorities. As an example, in the wake of Hurricane Katrina, the President of the United States and the Governor of Louisiana found it difficult to develop an agreement for the effective command and control of both National Guard and federal military forces for disaster and humanitarian relief efforts. President Bush wanted

Governor Blanco to appoint an active duty general officer into the Louisiana National Guard in order for him to command and control both federal and state military forces. The governor declined the president's offer because she did not want to risk forfeiting her constitutional responsibilities to command National Guard forces assigned under her direct control.²² As a direct result, President Bush appointed Lieutenant General Russell Honore to coordinate the Title 10 military assistance of civil authorities while Governor Blanco directed Major General Bennett Landreneau, the Adjutant General of the Louisiana National Guard, to coordinate the Title 32 military assistance of civil authorities. This contentious parallel military command structure resulted in many duplicitous and uncoordinated support efforts partly because both commands operated independent of one another.²³ The command decision was a pinnacle event for the Department of Defense response efforts because neither President Bush nor Governor Blanco wanted to risk the political consequence of acquiescing their perceived Constitutional authorities to the other.

Although coordination between federal and state relief efforts was criticized in the wake of Katrina, the mutual aid compact for emergency assistance between states worked remarkably well. Nationwide, National Guard forces were mobilized by their respective governors and were patrolling the streets and waterways of New Orleans rescuing people and saving lives within just four hours of Hurricane Katrina's passing on August 28, 2005. More than 9,700 National Guard soldiers and airmen were quickly mobilized and sent to New Orleans by August 30, 2005. In total, the National Guard deployed over 30,000 soldiers and airmen within just 96 hours of the storm. At the peak of this relief operation, governors from across the United States, with little notice and no

prior planning, dispatched more than 42,000 National Guard troops to provide civil support, law enforcement assistance and humanitarian aid to the local citizens of both Mississippi and Louisiana.²⁴ In comparison, it was not until September 3, 2005, a week after Governor Blanco initiated the Stafford Act, that active duty soldiers from the 82d Airborne Division and the 1st Cavalry Division arrived in Louisiana. This comparison of federal and state response times is an example of how the National Guard can easily leverage its existing relationships with governors and Congress while it is a more vexing challenge for an active duty officer to do the same without the benefit of having existing state relationships already in place.

Pertinent Legal Issues

The debate over whether the balance of power rests with the states or with the federal government began in earnest with the Second Continental Congress in 1775. Soon thereafter, the United States Constitution established the relationship between the state and federal government, but did not resolve the debate between those in favor of states' rights and those in favor of a strong central government. Instead, the United States Constitution defines our nation as a union of sovereign states. It grants Congress the authority to declare war and to raise armies. It also grants Congress the authority to organize, arm and discipline the militia while reserving the right for states to appoint officers and train their militia.²⁵ While the United States Constitution does not bar the use of active duty military forces in civilian situations or in matters of law enforcement, the United States government has traditionally refrained from employing federal troops to enforce the domestic law except in cases of civil disturbance.²⁶

The president is authorized by the Constitution and various federal laws of the United States to employ the Armed Forces of the United States to suppress

insurrections, rebellions, domestic violence, and disasters under an assortment of conditions and circumstances. It is now the Department of Defense policy that National Guard forces have primary responsibility for providing military assistance to state and local government agencies, mostly under the command of the state's governor.

Under the Insurrection Act, Congress delegated the authority to the president to call forth the military during an insurrection or civil disturbance. Specifically, Title 10, United States Code §§ 331 authorizes the president to use military force to suppress an insurrection at the request of a state government.²⁷ This is meant to fulfill the federal government's responsibility to protect states against domestic violence. The Insurrection Act has been used to send armed forces to quell civil disturbances a number of times during U.S. history. The most recent example of this occurred during the 1992 Los Angeles riots. The Insurrection Act was also used after Hurricane Hugo in 1989, during which wide-spread looting was reported in St. Croix, Virgin Islands.²⁸ If the president decides to respond to such situations, generally upon the recommendation of the attorney general or at the request of a governor, he must first issue a proclamation ordering the insurgents to disperse within a limited time.²⁹

The primary restriction on military participation in civilian law enforcement activities is a result of the Posse Comitatus Act, enacted by Congress under the provisions of Title 18, United States Code §§ 1385. This law provides that:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both.

To supplement to the Posse Comitatus Act, Congress authorized the Armed Forces of the United States to share information and equipment with civilian law

enforcement agencies under the provisions of Title 10, United States Code §§ 371-382 while also prohibiting the use of armed forces personnel to make arrests or conduct searches and seizures. The aforementioned Insurrection Acts (Title 10, United States Code §§ 331-334) are exceptions to the Posse Comitatus Act which authorizes the President of the United States to use the armed forces, as he considers necessary, to enforce the law or to suppress a rebellion.

The Posse Comitatus Act is often cited during tense debates between state and federal advocates on prevailing authority. As an example, in March 2009, the US Army initiated a formal inquiry to determine how and why active duty military police officers violated the Posse Comitatus Act when they responded to a murder scene in Samson, Alabama, near Fort Rucker. Twenty two military police officers assisted local police with traffic control and crime scene security. The Fort Rucker Garrison Commander and the Geneva County Sheriff signed a memorandum of understanding in September 2007 that outlined procedures for mutual aid assistance between the military and the neighboring civilian law enforcement agency. An investigation by the Department of Army Inspector General, subsequent to the March 2009 incident, found the use of military personnel in Samson violated the Posse Comitatus Act, which prohibits federal troops from performing law enforcement actions. As a result of these findings, the Army took administrative actions against several military personnel.³⁰ The Posse Comitatus Act applies only to federal forces and does not apply to the National Guard in state active duty status or National Guard active duty under Title 32, United States Code. Advocates of state authority claim this exemption to the Posse Comitatus Act makes the

National Guard a powerful and flexible civil support option for use by the states' governors.³¹

Another relevant federal law is the Robert Stafford Disaster Relief and Emergency Assistance Act. Congress enacted Title 42, United States Code §§ 5121-5206 to authorize the president to make a wide range of federal aid available to states that suffer natural or man-made disasters. In order to receive federal assistance though, the governor must first execute the state's emergency plan and make a determination that state capabilities are insufficient to deal with the circumstances. However, the Stafford Act does not allow federal active duty military forces to patrol civilian neighborhoods for the purpose of providing security from looting and other activities.³² Once again, the National Guard is the only military resource that is immediately available to provide supplemental law enforcement protection during an emergency.

Additional federal laws enable the command and control of military forces. Title 32, United States Code §§ 325 requires the consent of the governor to allow a Title 10 officer to exercise command over Title 32 members, even when that officer is a member of that State's National Guard who has been ordered to active duty. National Guard officers can exercise dual-status command under Title 32, United States Code §§ 325 and federal officers may accept state commissions when offered by a governor under Title 32, United States Code §§ 315. While there is no specific law or policy for state command or even tactical control of federal forces, it may not matter. The fact is, both the president and the state's governors have sufficient legal authorities that provide command and control options for active and National Guard military forces. Therefore, the friction between federal and state powers is not necessarily a command and control

issue from a legal standpoint. Instead, the problem is more about minimizing the political friction that results from the unity of effort options exercised by Department of Defense rules, regulations and military doctrine.

Unity of Command versus Unity of Effort

Lieutenant General H. Steven Blum, the National Guard deputy commander of USNORTHCOM, addressed the unity of command and unity effort with an audience at the Virginia Military Institute in September 2009; "We shouldn't be worried about who's in charge... the governor of the state is in charge...we need to move to a point where we have unity of effort."³³ Previously, Under Secretary of Defense Paul McHale addressed the challenges of military command structures during his February 9, 2006 testimony before the Senate Homeland Security and Governmental Affairs Committee regarding the state and federal response to Hurricane Katrina. He testified that during Katrina, many options were initially considered by the Department of Defense and the Bush Administration to help achieve unity of effort, including the suggestion of establishing a "dual-status" commander who would direct the efforts of both federal and National Guard military forces:

We in the military, in looking at the goal of maximum operational effectiveness, routinely try to achieve at least two things: unity of command and unity of effort. The Constitution of the United States was not written to support maximum effectiveness in military operations. The Constitution was written to establish a federal system of government under that document, and that means that inevitably, at the beginning of a domestic military mission, the governors, pursuant to their authorities under the Constitution, will have command and control of their state National Guard forces. The president and the Secretary of Defense, under Article II of the Constitution will command the federal forces. So we start any domestic mission with a breach in that principle of unity of command.³⁴

The dictionary of terms for the Department of Defense defines unity of command separate and distinct from unity of effort. Appreciating both the difference and the correlation between these two terms is vital to understanding the legal issue of why command and control is less important than the need to improve the unity of effort between USNORTHCOM and the National Guard.

Command and Control: The exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission. Command and control functions are performed through an arrangement of personnel, equipment, communications, facilities, and procedures employed by a commander in planning, directing, coordinating, and controlling forces and operations in the accomplishment of the mission.³⁵

Unity of Effort: Coordination and cooperation toward common objectives, even if the participants are not necessarily part of the same command or organization - the product of successful unified action.³⁶

USNORTHCOM Unity of Effort

To fully integrate the reserve components, the 2008 Commission on the National Guard and Reserves recommended three changes in law and policy to improve both command and unity of effort at USNORTHCOM. First, because USNORTHCOM has significant responsibility for domestic emergency response and civil support, a majority of its billets, including those for its service components, should be filled by leaders and staff with reserve qualifications and credentials.³⁷ In response to this Commission's first recommendation, the Secretary of Defense agreed to review USNORTHCOM billets to determine which positions could be better filled by National Guard and Reserve personnel. Secondly, the Commission recommended that the officer serving in the position of the commander or the deputy commander of USNORTHCOM should always be a National Guard or Reserve officer.³⁸ The Secretary of Defense disagreed with this recommendation and instead recommended that National Guard and Reserve officers

should be considered for the most senior command and leadership positions, consistent with their qualifications.³⁹ In response to the disagreement by Secretary of Defense to this recommendation, Congress mandated in Section 1824(b) of the 2008 National Defense Authorization Act that either the commander or deputy commander of USNORTHCOM must be a National Guardsman. The 2008 National Defense Authorization Act also required the President of the United States to establish a bipartisan Council of Governors to advise the federal government on the use of domestic National Guard forces. The Commission also recommended that USNORTHCOM develop plans for civil support and consequence management that account for state-level activities and incorporate the use of National Guard and Reserve forces as first military responders. The Secretary of Defense agreed with this recommendation, adding a modification to include Active, National Guard and Reserve military responders and a requirement that the combatant commanders be familiar with state response plans and resources.⁴⁰

Command Options for USNORTHCOM Unity of Effort

USNORTHCOM can satisfy the requirements of the 2008 National Defense Authorization Act by establishing one of three potential coordinating command authorities to unify its efforts: federal coordinating command authority; a hybrid federal coordinating command authority; and a National Guard coordinating command authority. All three of these options require the National Guard Bureau to serve as the primary Department of Defense joint military force provider to USNORTHCOM while United States Joint Forces Command (USJFCOM) serves as the federal military force provider of last resort.⁴¹

The first option uses the existing USNORTHCOM federal coordinating command authority relationship with the National Guard. With this association, the commanding officer of USNORTHCOM is a traditional active duty officer serving in the rank of general. The deputy commanding officer of USNORTHCOM is an active duty Title 10 National Guard officer serving in the rank of lieutenant general. This current relationship allows the president direct coordinating authority of all assigned federal forces. As such, the commander of USNORTHCOM leverages the relationships of the National Guard deputy commander with the National Guard Bureau and the various states' adjutants general for unity of effort. In the event that National Guard forces are federalized under Title 10, United States Code, unity of command is achieved by integrating these forces into the USNORTHCOM chain of command. However, political unity of effort is risked by removing the states' governor from the National Guard chain of command.

The second option uses a hybrid federal coordinating command authority that mirrors the command structure of the first option but also allows for a flexible chain of command structure that is dependent on the crisis at hand. This option allows the current active duty commander of USNORTHCOM to select from a menu of potential joint task force command structures that suits the immediate planning or crisis action needs should a homeland defense or security issue arise. In keeping with the Secretary of Defense preference, this option allows the USNORTHCOM commander maximum flexibility to select either a dual status National Guard joint service subordinate commander or federal status joint service commander as needed. In the event of federal activation and mobilization of National Guard forces under Title 10, United States Code, unity of command is also achieved by integrating these forces into the

USNORTHCOM chain of command. However, political unity of effort is again risked by removing the states' governor from the National Guard chain of command.

This political risk for the second option could be mitigated by appointing a National Guard lieutenant general as the commander of US Army North (ARNORTH). As the Army Service Component Command (ASCC) and Joint Force Land Component Command (JFLCC) for USNORTHCOM, ARNORTH conducts homeland defense, civil support operations and Theater Security Cooperation (TSC). ARNORTH is currently headquartered at Fort Sam Houston, Texas. By design, ARNORTH commands ten Defense Coordinating Officers (DCO) aligned with the ten Federal Emergency Management Agency (FEMA) regions to streamline defense coordination. This option presents the Army National Guard with a unity of command solution similar to that provided to USNORTHCOM's air component. AFNORTH is commanded by an Air National Guard lieutenant general who also serves as the NORAD air defense commander. This provides the Air National Guard with a numbered Air Force that is primarily charged with the air defense responsibility for the North American continent.

The third option of a National Guard coordinating command authority allows the Secretary of Defense to appoint a National Guard officer as commander of USNORTHCOM with an active duty deputy commander. This option would require the National Guard USNORTHCOM commander to coordinate domestic plans and operations with the president and the states' adjutants general. Having a National Guard commander provides a peer relationship with the director of the National Guard and a supporting relationship with the states' adjutants general. Even though the friction between federal and state powers still exists with this option, a National Guard

USNORTHCOM commander has an advantage by already possessing the necessary state and federal relationships to fully understand the unity of effort requirements that fulfill both federal and state command responsibilities under both Title 10 and Title 32 United States Code. This option would reduce the current political risk because it provides a better balanced legal structure for command and control that matches the needs of the federal government while respecting the needs of the governors from the sovereign states.

In regard to these three unity of effort options, Secretary of Defense Robert Gates pledged on November 19, 2009, to find a way to install a National Guard general to command USNORTHCOM by elevating a reserve component officer to the level of combatant command rank. Establishing a National Guard Coordinating Command Authority would add a second four-star general to the National Guard.⁴² The elevation of a National Guard officer to command USNORTHCOM would underscore the critical importance of the National Guard contributions to America's overall national defense. It would also validate the vital role a National Guard combatant commander has in bridging the friction that currently exists between the state and federal authorities of our government regarding the employment of the active and reserve components of our military for homeland defense.

Current Political Sentiment

The political intentions and actions of Congress may be more important than the military command relationships concerning command and control of federal and state military forces. The late Thomas P. (Tip) O'Neill, Jr., former Speaker of the House of Representatives once said "All politics is local." It can also be said that the politics of national defense is also local. History proves that most governors will oppose any

measure that grants USNORTHCOM, as an active duty headquarters, full control of National Guard troops during domestic emergencies.

Even though there is a tremendous amount of historic and legal precedence that provides presidential authority in such matters, many state governors and adjutants general strongly believe that using active duty military forces in domestic situations will lead to confusion about who's in charge during the aftermath of natural or man-made disaster. The confusion could result in duplicate response efforts by both federal and state military forces as with Hurricane Katrina.⁴³ Major General Steven Doohan, Adjutant General of the South Dakota National Guard, recently stated: "I think most of the states' governors feel the command of any military forces brought into their state should be handled under the control of the governor." When the active duty military gets involved, questions always arise about who is in control and where the buck is going to stop. Governors take very seriously the responsibility of being in command and control of their local responders. Counter to that statement though, Defense Secretary Robert Gates said in 2008 that he does not favor ceding control of federal forces to state governors.⁴⁴

In June, 2009, USNORTHCOM circulated a legislative proposal requesting Congress to amend the current federal law to empower the Secretary of Defense the authority to activate any federal reserve force in the event of a domestic disaster. Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, was adamant in his response to the Defense Department proposal: "Using the military for law enforcement goes against one of the founding tenets of our democracy. We fail our

Constitution, neglecting the rights of the states, when we make it easier for the president to declare martial law and trample on local and state sovereignty.⁴⁵

The National Governors Association also disagreed with the proposal and successfully prevented the Department of Defense from including the authorization language from being included in the final 2010 National Defense Authorization Act. The governors argued that the proposal could infringe on the Constitutional powers granted to the states' governors. The governors successfully argued the Department of Defense needs to first resolve the question of who controls all military forces during a domestic disaster, a power the National Governors Association says should be left in the hands of governors, not USNORTHCOM. U.S. Representative Neil Abercrombie said he "absolutely supports" the position taken by the governors association. Abercrombie, Chairman of the House Armed Services Subcommittee on Air and Land Forces, said the defense department proposal was "clearly unconstitutional" and stems from a Bush Administration decision in 2002 to create USNORTHCOM, giving it the authority to control the Pentagon's homeland defense and coordinate civil support missions.⁴⁶

Counter Arguments

Natural disasters and terrorist attacks against American citizens causing heavy casualties, remains likely over the next quarter century.⁴⁷ Some argue that the National Guard and some governors are not as professional as their active duty counterparts and nationally elected officials.⁴⁸ This view is reflective of the infamous critiques of the militia as published by Major General Emory Upton shortly after the Civil War. He believed the power of the governors and the adjutants general was an intrusion into the nation's active duty military affairs. He also resented the power of the states in the appointment of military officers. Upton's philosophies were well known by the military and by the

Secretary of War of that time, Elihu Root. While Secretary Root admired Upton's writings, he realized that Upton was naive when it came to the realities of national politics and the formulation of policy. The active duty professionals that adopted Upton's views on the militia became known as "Uptonians," and they became a powerful influence in military planning for the remainder of the 20th Century.⁴⁹ As such, modern day "Uptonians" still believe the National Guard may not be as ready or as dependable as their federal counterparts to effectively command either USNORTHCOM or effectively manage major catastrophic disasters.

Others point to the fact that the commander for USNORTHCOM is also the commander of NORAD, which is a bi-national United States and Canadian organization charged with the missions of aerospace warning and maritime control for North America. Because NORAD is charged with the air defense mission of the North American continent, the USNORTHCOM/NORAD commander is currently a pilot rated officer position. Changing this requirement would require the concurrence of both the United States and Canadian governments. Accordingly, the eligibility list of any general officer selected to command USNORTHCOM is restricted to pilot rated officers only. However, the Air Force Inspector General concluded in a 1992 report to the Department of Defense that although desirable, aviation skills and experience are not actually needed for the commander of NORAD. Some question whether or not a National Guard officer should command NORAD because the area of responsibility has just as much of an obligation to defend Canada as it does to defend the United States. Requiring the National Guard to defend outside its traditional territorial boundaries may be asking too much.

Also, some are concerned that increasing the homeland defense demands of the National Guard may create unnecessary near and long term resource problems for the reserve components. This has prompted many governors to question whether they have enough qualified National Guard forces available to support their own homeland defense missions, much less command USNORTHCOM.⁵⁰ Perhaps even more troublesome to the active components of our military is the fact that most National Guard general officers are not usually accountable to active duty commanders except when they are federalized. Until then, National Guard officers are only accountable to their respective governor. As a result, some active duty general and flag officers may prefer filling key billets with their active duty counterparts at the expense of not fully integrating National Guard officers into the key assignments that could fully qualify them for promotion above the rank of major general.

Conclusion

Perhaps James Madison said it best in his comparison of the influences and frustration of state and federal powers in the “Federalist Number 46” which was published to the people of New York on Tuesday, January 29, 1788. Madison wrote that the powers granted to the federal government are few and specific and should be exercised towards external parties. Powers granted to the states are many and general and should be focused solely on internal affairs. The federal government will be the most important in times of war and danger, the state government in times of peace and security. To that end, people are more likely to be more supportive of their state governments, which are geographically closer to them and in which they may have relatives and neighbors.⁵¹

The debate on the roles and responsibilities between USNORTHCOM and the National Guard is merely a manifestation of the historic struggle between the active military and their reserve components for resources and influence. A 1997 National Defense Panel recently concluded that "While the other services have continued to increase the integration of their active and reserve forces, the Army has suffered from a destructive disunity among its components, specifically between the active Army and the National Guard. This rift serves neither the Army nor the country well."⁵² As such, the active component is paired with the executive branch as its commander and chief. The National Guard is paired with the legislative branch, with the state governors as their commander in chief, except when called into federal service by the president.

As elected officials continue debating the best option to unify state and federal military forces for homeland defense, one principle remains unchallenged -- local citizens do not favor using federal troops in a civil law enforcement role. To codify congressional intentions, the 2008 National Defense Authorization Act required the President of the United States to establish a bipartisan Council of Governors to advise the Department of Defense, Department of Homeland Security, and the White House Homeland Security Council (HSC) regarding the use of the National Guard for civil support missions.⁵³ In fulfilling that mandate, President Obama signed an executive order on January 11, 2010 and established a Council of Governors to strengthen the domestic response partnerships between the federal and state governments. In particular, the council is tasked to review matters that involve National Guard domestic missions for homeland defense and support of civil authorities. The council intends to improve the integration of federal and state activities that are of mutual interest and

responsibility.⁵⁴ While there are some exceptional circumstances where the President of the United States has the constitutional authority to use federal troops domestically, there should be no doubt that the governors will continue to lead the debate on security and defense issues regarding their home states.

The Armed Forces of the United States are currently engaged with wars in both Iraq and Afghanistan. The National Guard continues to play a vital role in our national defense alongside their active duty counterparts. The National Guard and their active duty counterparts have served under the commands of each other throughout our nation's history. Who is in charge becomes much less of an issue than how we best unify our homeland defense efforts. In that sense, it really does not matter whether a commander is from the active duty component or the National Guard.

Any fully qualified Active, Reserve or National Guard officer can effectively handle a Unified Combatant Command. Congress, the National Governors Association and the Secretary of Defense have all indicated their desire to eventually assign a qualified National Guard combatant commander to USNORTHCOM. That commander will ultimately answer to the president, through the Secretary of Defense, with the advice and consent of a bipartisan Council of Governors. Eventually having one of the governors' own National Guard commanders at the helm of USNORTHCOM may go a long way toward easing many of the political concerns that currently hamper the existing unity of effort when deciding who's in charge of a federal or state's domestic operation.

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